

REMARKS

Applicants request reconsideration and allowance in view of the amendments to the claims and the following remarks. Claims 1, 2, 5, 8-12, 15, 18-22, 25, and 28-44 are pending, with claims 1, 11, 21, and 40 being independent. No new matter has been added.

Rejections Under 35 U.S.C. § 101

Claim 40 has been rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular, claim 40 is said to not achieve a useful, concrete, and tangible result.

As amended, independent claim 40 recites “modifying data passing through the receiving buffer based on the determinations related to latency adjustment.” Applicants submit that the amendment to claim 40 produces a useful, concrete, and tangible result in the same manner as the Examiner’s suggestion of adding “sample modifying” subject matter. Therefore, Applicants submit that the amendment to claim 40 addresses all of the Examiner’s articulated concerns and respectfully request reconsideration and withdrawal of the rejection.

Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 1, 11, 21, 34-36, and 40 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, claims 1, 11, 21, 34-36, and 40 are said to recite a time window used for measuring instantaneous communication delay and a time window used for determining a range in a manner that is inconsistent with the specification. Claims 1, 11, 21, 34-36, and 40 have been amended. Applicants submit that claims 1, 11, 21, 34-36, and 40 are consistent with the specification and find support throughout the specification, for example, at page 3, line 21 through page 6, line 28.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claim 21 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, the limitation of “wherein instructions for causing a computer to modify” is said to have insufficient antecedent basis. Claim 21 has been amended to recite “wherein the process that causes a computer system to modify.” Applicants submit that the amendment to claim 21

addresses all of the Examiner's articulated concerns and respectfully request reconsideration and withdrawal of the rejection.

Smith in view of Hodson Rejection

Claims 1, 2-5, 9-12, 15, 18-22, 25, 28-33, and 37-40 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith (U.S. Patent No. 6,862,298) in view of Hodson (Hodson et al., Skew Detection and Compensation for Internet Audio Applications, ICME 2000, July 2000, Vol. 3).

As amended, independent claim 1 recites a method for dynamic latency management in a real-time electronic communication that includes, *inter alia*, selecting a time window defined based on a time necessary to capture a complete cycle of fluctuations in a receiving buffer and determining a working range for a communication delay by measuring and analyzing delays experienced during the selected time window. Applicants respectfully request reconsideration and withdrawal of the rejection of amended independent claim 1 because neither Smith, Hodson, nor a proper combination of the two, describes or suggests at least these features.

Specifically, Smith describes an adaptive jitter buffer manager that determines whether changes in jitter buffer size and alignment are desirable and implements the changes by altering the jitter buffer and adjusting speed control. See col. 5, lines 22-26. The jitter buffer manager of Smith manages the jitter buffer by calculating the variance of packet arrival offsets over a particular number of frames (e.g., 100) and determining whether the jitter buffer size needs to be increased or decreased based on the calculated variance of packet arrival offsets. See col. 5, line 55 through col. 6, line 31. However, the jitter buffer manager of Smith does not determine a working range for a communication delay by measuring and analyzing delays experienced during a time window selected based on a time necessary to capture a complete cycle of fluctuations in the receiving buffer. Rather, the jitter buffer manager of Smith determines whether to change the size of a jitter buffer by calculating the variance of packet arrival offsets over a particular number of frames controlled by a variable. Although Smith describes calculating a moving average over a particular number of frames that is suitably set to 100, merely describing that an average is taken over a particular number of frames set or 100 frames does not describe or suggest that the set number of frames or 100 frames corresponds to a time

window defined based on a time necessary to capture a complete cycle of fluctuations in a receiving buffer. In fact, the number of frames set by the variable in Smith has no relationship to a time window as claimed and Smith provides no disclosure that the number of frames is defined based on a time necessary to capture a complete cycle of fluctuations in the receiving buffer. Therefore, Smith fails to describe or suggest selecting a time window defined based on a time necessary to capture a complete cycle of fluctuations in a receiving buffer and determining a working range for a communication delay by measuring and analyzing delays experienced during the selected time window, as recited in amended independent claim 1.

Hodson fails to remedy the deficiencies of Smith discussed above. Specifically, Hodson was merely cited for describing modifying samples by performing heuristic resampling of a playback block. Thus, Hodson fails to remedy the failure of Smith to describe or suggest selecting a time window defined based on a time necessary to capture a complete cycle of fluctuations in a receiving buffer and determining a working range for a communication delay by measuring and analyzing delays experienced during the selected time window, as recited in amended independent claim 1.

Because neither Smith nor Hodson describes or suggests selecting a time window defined based on a time necessary to capture a complete cycle of fluctuations in a receiving buffer and determining a working range for a communication delay by measuring and analyzing delays experienced during the selected time window, their combination also fails to describe or suggest at least this feature.

For at least these reasons, Applicants request reconsideration and withdrawal of the rejection of independent claim 1, along with claims 2, 5, 8-10, 31, 34, and 37 that depend therefrom.

Independent claim 11 recites a computer program, residing on a computer-readable medium, for dynamically managing latency in a real-time electronic communication in a manner corresponding to that of independent claim 1, and independent claim 21 recites a system that does the same. Accordingly, for the reasons noted above with respect to independent claim 1, Applicants request reconsideration and withdrawal of the rejection of independent claims 11 and 21, along with claims 12, 15, 18-20, 22, 25, 28-30, 32, 33, 35, 36, 38, and 39 that depend therefrom.

Independent claim 40 recites, inter alia, selecting a time window defined based on a time necessary to capture a complete cycle of fluctuations in a receiving buffer and determining a working range for a communication delay by measuring and analyzing delays experienced during the selected time window. Accordingly, for the reasons noted above with respect to independent claim 1, Applicants request reconsideration and withdrawal of the rejection of independent claim 40.

Conclusion

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicants submit that all claims are in condition for allowance. The fee in the amount of \$790.00 in payment of the RCE fee is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 5/8/07



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